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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WT Docket No. 97-82

Public Notice DA 97-679

In the Matter of)
)
Amendment of Part 1 of the Commission's)
Rules – Competitive Bidding Proceeding)
)
Comments Requested on Broadband PCS)
C and F block Installment Payment Issues)

REPLY COMMENTS OF GTE SERVICE CORPORATION

GTE Service Corporation, on behalf of its telephone and wireless companies ("GTE"), hereby submits its reply with respect to the above-captioned Public Notice seeking comment on various proposals for C and F block debt restructuring and financial relief.¹ As detailed below, GTE agrees with the broad range of commenters who suggest that modification of the C and F block auction rules at this juncture would be contrary to the public interest. Not only would an alteration of the Commission's rules undermine the integrity of the Commission's auction process, it would also unfairly prejudice those entities that formed their business plans based on the expectation that the Commission would strictly enforce its rules and policies existing at the time of the auction. For these reasons, GTE echoes the request of numerous commenters who urge the Commission not to modify the C and F block auction rules at this time.

¹ FCC Public Notice, *Wireless Telecommunications Bureau Seeks Comment on Broadband PCS C and F block Installment Payment Issues*, DA No. 97-679 (June 2, 1997).

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I. After-The-Fact Modification Of The C And F Block Rules And Policies Would Not Serve The Public Interest And Should Be Abandoned As An Option For Relief

GTE endorses the view of the broad range of commenters who agree that modification of the C and F block payment rules and policies at this juncture would represent a sharp departure from the Commission's prior approach to spectrum auction and would undermine the integrity of the auction process. Accordingly, GTE submits that reformation or restructuring of the existing payment procedures is not a suitable option.

The Commission's competitive bidding rules are carefully designed to "place licenses in the hands of parties able to use them most efficiently."² To ensure that the auction process achieves this objective, Congress expressly directed the Commission to "include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees and permittees, and to promote investment in and rapid deployment of new technologies and services."³

To this end, the Commission's auction rules contain "strong incentives for potential bidders to make certain of their qualifications and financial capabilities before the auction so as to avoid delays in the deployment of new services to the public that

² *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, 9 FCC Rcd 2348, 2350 (1994) (Second Report and Order) [hereinafter *Competitive Bidding Second Report and Order*].

³ 47 U.S.C. § 309(j)(4)(B).

would result from litigation, disqualification, and re-auction.”⁴ Although C and F block entrepreneurs that qualify for installment payments are extended somewhat greater leniency in meeting their payment obligations than that afforded to non-entrepreneurs,⁵ the Commission’s rules condition the licenses of these entities on “the full and timely performance of the licensee’s payment obligations.”⁶ In addition, even in the C and F block context, the Commission has repeatedly stated that, “in order to maintain the integrity of the auction process, and to ensure the efficient provision of services to the public, auction participants are held to certain obligations, such as meeting relevant financial deadlines.”⁷

Against this backdrop, a broad range of entities agree that any proposal to relieve the debt of C and F block licensees is flatly inconsistent with the Commission’s auction philosophies to date and risks undermining the integrity of the auction process. For example, a group of PCS licensees that includes C and F block licensees that have met their installment payment obligations points out that, “the Commission will undermine the essential integrity of all future auction events if it suggests that its

⁴ *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2382.

⁵ For example, the rules provide that, “[i]f an eligible entity making installment payments is more than ninety (90) days delinquent in any payment, it shall be in default.” 47 C.F.R. § 1.2110(e)(4)(i). In addition, upon default or anticipation of default in one or more installment payments, entrepreneur block licensees may request a three to six month grace period during which no installment payments need be made. 47 C.F.R. § 1.2110(e)(4)(ii).

⁶ 47 C.F.R. § 1.2110(e)(4).

⁷ See, e.g., *BDPCS, Inc., Emergency Petition for Waiver of Section 24.711(a)(2) of the Commission’s Rules*, FCC No. 96-498 (Jan. 6, 1997).

competitive bidding payment rules are negotiable Only strict adherence to the Commission's competitive bidding rules, orders, and public pronouncements will serve the public interest."⁸ These commenters also underscore that reductions in or elimination of interest payments in the C and F block context will encourage speculation in future auctions to the detriment of legitimate applicants.⁹

Similarly, Sprint Corp. ("Sprint") points out in its comments that, "significant changes in the ownership terms or payment obligations of C and F block licensees will damage the interests of those who relied on and complied with the . . . existing rules, including C and F block licensees, unsuccessful C and F block bidders and those, like Sprint, who . . . did not form business ventures with potential C and F block bidders under the Commission's existing rules."¹⁰ Sprint further states that significant modification of the existing auction rules will "negate the efficacy of existing, as well as any future auction-related rules and encourage others in future auctions to engage in the same kind of conduct that has led to the current, unfortunate, situation."¹¹

⁸ Comments of Cook Inlet Region, Inc., Cook Inlet Western Wireless PV/SS PCS, L.P., Western Wireless Corporation, AirGate Wireless, L.L.C., Aerial Communications, Inc., TeleCorp, Inc., and Airadigm Communications, Inc., WT Docket No. 97-82, at 3 (filed June 23, 1997).

⁹ *Id.* at 17. See also Comments of Airadigm Communications, Inc., WT Docket No. 97-82, at 2 (filed June 23, 1997) ("The Commission recognized that if its auction rules were to have any credibility, the installment payment requirements had to be met, otherwise, bidders might engage in speculative bidding with the expectation that they could be financially rescued by some form of regulatory relief.").

¹⁰ Comments of Sprint Corp., WT Docket No. 97-82, at 2 (filed June 23, 1997).

¹¹ *Id.*

ALLTEL Communications, Inc. ("ALLTEL") similarly underscores that "auctions must be fair and impartial and should continue to be perceived as such."¹² ALLTEL states that, in its view, "the Commission should not undermine the basic fairness and impartiality of the auction mechanism by changing the rules after the fact."¹³ Nextel Communications, Inc. ("Nextel") shares this view and points out that a change in the rules at this juncture is unfair to all those entities that developed their business plans and auction strategies in reliance on the expectation that the applicable payment rules would be strictly enforced.¹⁴ Nextel also observes that Commission actions that undermine the integrity of the auction rules will "create additional uncertainties for potential investors who must make their investment decisions based on, among other things, the Commission's bid payment obligations."¹⁵ "Such uncertainties," Nextel notes, "would make it more difficult for all spectrum-based providers to raise much needed capital."¹⁶

¹² Comments of ALLTEL Communications, Inc., WT Docket No. 97-82, at 2 (filed June 23, 1997).

¹³ *Id.* See also Comments of Bell South Corporation, WT Docket No. 97-82, at 3-4 ("Changing the basic terms on which an auction was conducted after the close of the auction . . . destroys the integrity of this and future auctions and rewards speculative behavior.").

¹⁴ Comments of Nextel Communications, Inc., WT Docket No. 97-82, at 8-9 (filed June 23, 1997).

¹⁵ *Id.*

¹⁶ *Id.*

GTE agrees with these views. Congress and the Commission have recognized that strict application of the competitive bidding rules is essential to ensure that the auction process serves its underlying goal, which is to place spectrum in the hands of those entities that will use it most effectively. The Commission itself has recognized that strict enforcement of the auction rules permits the agency to promote this objective without having to "take into account the private business arrangements that an applicant has made to finance its successful bid."¹⁷

In addition, as noted by numerous commenters in the instant proceeding, licensees and potential investors expect that the auction rules will be applied strictly and have made their business plans on the basis of this presumption. Changes in the installment payment rules at this time, in effect applied retroactively, would establish new ground rules that cannot be taken advantage of by those entities that carefully complied with the Commission's policies in place at the time the C and F block auctions were held. For example, Airadigm Communications, Inc. ("Airadigm") points out that relaxing the existing rules now "is unfair to those licensees who have played by the rules."¹⁸

¹⁷ *BDPCS, Inc., Emergency Petition for Waiver of Section 24.711(a)(2) of the Commission's Rules*, FCC No. 96-498, at ¶ 8 (Jan. 6, 1997).

¹⁸ Comments of Airadigm Communications, Inc., WT Docket No. 97-82, at 3-4 (filed June 23, 1997). See also Comments of ALLTEL Communications, Inc., WT Docket No. 97-82, at 3 (filed June 23, 1997) ("Any post-auction changes serve only to prejudice those prudent applicants which played by the rules"); Comments of Comcast Corporation, WT Docket No. 97-82, at 13 (filed June 23, 1997) ("[L]osing bidders and non-participants . . . relied upon the terms and conditions defined in advance of the auction in determining not to bid higher prices in the auction or to participate. Any significant change in the payment terms of and other conditions applicable to C block

The record makes clear that Commission action at this time to alter the terms of financial agreements or to revise the investment rules would be prejudicial to other auction winners, entities that dropped out of auctions in reliance on the Commission's clearly articulated standards, and potential investors in C and F block applicants. The Commission simply cannot justify taking such action that would be truly disruptive to the telecommunications industry, injurious to the investment community, and ultimately will erode the effectiveness of the competitive bidding process.

Finally, the Commission is obliged to pursue some level of consistency in its application of policy. The joint comments filed by several C and F block PCS licensees remind the Commission of its action when licensees in the Interactive Video and Data Service ("IVDS") sought relief from full compliance with their payment obligations.¹⁹ Sprint Spectrum L.P. d/b/a Sprint PCS also points out that the Commission otherwise has firmly enforced its auction and financial rules throughout the various auctions held to date.²⁰ Manifestly, a sharp deviation from this approach in the C and F block context at this point in time would raise serious concerns about the Commission's compliance

(. . . Continued)

licensees would be fundamentally unfair to these persons . . . "); Comments of Community Service Communications, Inc., WT Docket No. 97-82, at 8-9 (filed June 23, 1997).

¹⁹ Comments of Cook Inlet Region, Inc., Cook Inlet Western Wireless PV/SS PCS, L.P., Western Wireless Corporation, AirGate Wireless, L.L.C., Aerial Communications, Inc., TeleCorp, Inc., and Airadigm Communications, Inc., WT Docket No. 97-82, at 18-19 (filed June 23, 1997).

²⁰ Comments of Sprint Spectrum L.P. d/b/a Sprint PCS, WT Docket No. 97-82, at 4-6 (filed June 23, 1997).

with the requirements of the Administrative Procedure Act ("APA"), as well as with the agency's due process obligations.

As mentioned by various commenters, it is a well-settled cornerstone of administrative law that an agency must provide an adequate explanation before it treats similarly situated parties differently or effectuates a change in the course of its policies.²¹ Thus, if the Commission now decides to relax the repayment obligations of C and F block licensees, it must explain why such relief is appropriate in the C and F block context when, just eighteen months ago, it declined to extend similar relief to IVDS licensees. In addition, to meet its obligations under the APA, the Commission must reconcile and explain its departure from numerous other occasions where the agency made statements explaining the importance of strict enforcement of its auction rules or otherwise decided not to grant requests for relief from enforcement of various competitive bidding payment obligations.²²

Furthermore, as noted by BellSouth Corporation ("BellSouth"), an agency's due process obligations require it to provide full and explicit notice of its requirements before members of the public may be bound by those requirements, and imply that, "when the Commission does give fair and explicit notice of its rules, the public is entitled to rely on

²¹ Comments of Cook Inlet Region, Inc., Cook Inlet Western Wireless PV/SS PCS, L.P., Western Wireless Corporation, AirGate Wireless, L.L.C., Aerial Communications, Inc., TeleCorp, Inc., and Airadigm Communications, Inc., WT Docket No. 97-82, at 19-20 (filed June 23, 1997).

²² See *id.* at 20-21. See also Comments of Sprint Spectrum L.P. d/b/a Sprint PCS, WT Docket No. 97-82, at 3-6 (filed June 23, 1997).

those rules and the Commission is bound to follow them.”²³ In the case of the C and F block auctions, the Commission’s rules provided C and F block bidders full and explicit notice of the installment payment requirements with which winning bidders would be required to comply. Bidders and investors relied on these rules in deciding how to proceed in the auction or whether to participate at all.

Given the importance of the announced auction rules in shaping the business plans of affected entities, GTE agrees with BellSouth’s observation that, “fundamental fairness and due process of law [obligate] the Commission to require the winning bidders to comply with the installment payment obligations established by the rules in effect at the time of auction.”²⁴ Similarly, BellSouth correctly notes that, after developing the installment payment rules through a “public notice-and-comment rule making,” the Commission “is not free to change these rules after the fact, once parties have shaped their conduct in reliance on them.”²⁵ Rather, “[t]he Commission is ‘bound to recognize the validity of the rule of conduct prescribed by it and not to repeal its own enactment with retroactive effect.’”²⁶ GTE submits that the better and only legally defensible approach is for the Commission to maintain its strict and careful enforcement of the rules surrounding licensee payment obligations.

²³ Comments of BellSouth Corporation, WT Docket No. 97-82, at 14 (filed June 23, 1997).

²⁴ *Id.* at 15.

²⁵ *Id.* at 15-16.

²⁶ *Id.* at 16 (quoting *Arizona Grocery co. v. Atchison, Topeka & Santa Fe Railway Co.*, 284 U.S. 370, 389 (1932)).

II. Conclusion

For the reasons set forth above, the Commission should not at this stage alter the financial obligations of C and F block PCS licensees. Rather, granting the requested relief would undermine the auction process, impermissibly affect those entities that acted during the C and F block auctions in full reliance on the Commission's articulated rules, and raise significant legal questions about the validity of the Commission's action.

Respectfully submitted,

GTE Service Corporation and its telephone
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